

REMARKS/ARGUMENTS

1. Remarks on the Preliminary Amendment

Claims 1, 3, 6, 10, 13-14, 18-19, 25, 30-32, 34-35, 38, 40 and 42-46 have been amended to more specifically define Applicant's claimed invention. More specifically, these claims have been amended to comply with the requirement on the antecedent basis of the claim language.

Furthermore, independent method Claims 25, 40, and 43 have been amended to incorporate all claim limitations of Claim 1.

Antecedent basis of the amendment can be found in the claims and the Specification as filed. Applicant respectfully submits that no new matter is introduced by the amendment.

2. Response to the Restriction Requirement

The Examiner has required in the Office Action dated June 21, 2006, that pursuant to 35 USC §121, the subject application be restricted to one of the alleged four "inventions" of Group I (Claims 1-24), Group II (Claims 25-39), Group III (Claims 40-42), and Group IV (Claims 43-46). Responding thereto, Applicant hereby elects, with traverse, the Group I invention presently defined by Claims 1-24.

Moreover, the Examiner has further required that if Group I is elected, one species from each of Species Groups A-D must also be elected. Responding thereto, Applicant hereby elects the following:

- epitope in Species Groups A,
- serum protein in Species Groups B,
- at least one detection enzyme in Species Groups C, and
- immuno-based/immunohistochemical in Species Groups D.

Applicant respectfully requests reconsideration and withdrawal of the restriction requirement.

With regard to the restriction of the alleged four groups of inventions, as stated above, Applicant has amended the independent Claims 25, 40, and 43, which are directed to

the method of using the device and belong to the non-elected groups of invention, to incorporate all claim limitations of amended Claim 1, which is directed to the device.

The Examiner contends that the "invention" in Groups I, II, III and IV are distinct because they are product and process of use. The Examiner maintains that the inventions are distinct as explained by MPEP §806.05 (h).

Applicant respectfully believes that the restriction is improper. A critical reading of the restriction requirements, as cited by the Examiner, finds that the four groups of claims do not meet the requirements for the restriction. More specifically, the requirement in MPEP 806.4 states that the Examiner needs to show that the two or more inventions are in fact independent.

The Examiner is requested to reconsider the restriction requirement under 35 USC §121 to elect a single invention. The requirements of §121 are that the inventions be independent and distinct. Both requirements are necessary to maintain a restriction requirement. Applicant maintains that the Examiner has not focused upon the two requirements of being independent and distinct. It is noted that M.P.E.P. §802.01 provides a definition of independent as follows:

The term "independent" [i.e., not dependent] means that there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation or effect, for example, [1] species under a genus which species are not usable together as disclosed or [2] process and apparatus incapable of being used in practicing the process.

Applicant contends that the four Groups are not independent of each other. More specifically, the amended method Claims 25, 40 and 43 have incorporated all claim limitations of Claim 1 directed to the device, therefore, Groups II, III and IV inventions are not independent of Group I.

Furthermore, Applicant submits that the search for the device of the Group I invention will be the same search for the method of Groups II, III and IV inventions, since the same device is used in each of Groups II, III and IV inventions, and hence would not require any undue searching by the Examiner. Therefore, it is not readily understood that examining Groups I, II, III and IV inventions together would cause a serious burden on the PTO.

On the other hand, the alleged four Group inventions resulting from the restriction requirement would cause Applicants additional expenses and time to prosecute separate patent applications. The burden placed upon Applicant for filing separate cases directed to each of the groups is respectfully submitted not to be outweighed by the burden placed upon the Patent Office by a coextensive examination of these groups in one application.

Applicant believes that it would be more efficient to examine all the claims rather than expend additional time prosecuting divisional applications relating to the specific Group I, II, III, or IV "inventions." Consequently, in the interest of efficiency, it is respectfully submitted that the restriction requirement is untenable and ought to be withdrawn.

Applicant appreciates the Examiner's clear guidance in preserving Applicant's right. If the Examiner maintains the restriction requirement, then Applicant respectfully requests the Examiner to consider rejoinder of Groups II, III, and IV claims upon an indication of allowable subject matter in Group I claims.

With regard to the restriction of Species, as stated by the Examiner, currently Claim 1 and Claim 25 are generic. Applicant respectfully submits that upon the allowance of a generic claim, Applicant is entitled to consideration of claims to additional species which are written in dependent form, or otherwise include all limitations of the allowed generic claim as provided by 37 CFR1.141.

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Date of Signature

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